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January 24, 2003

VIA HAND DELIVERY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Wireline Competition Bureau
P.O. Box 358145
Pittsburgh, PA 15251-5145

Re: **In the Matter of the Application of Florida Digital Network, Inc. and Southern Digital Network, Inc. d/b/a FDN for Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Certain Assets of Mpower Communications Corp.**

Dear Ms. Dortch:

On behalf of Florida Digital Network, Inc. and Southern Digital Network, Inc. (the "FDN Companies") and Mpower Communications Corp. ("Mpower"), enclosed please find an original and six (6) copies of an application for Commission approval to transfer control of certain telecommunications assets of Mpower to the FDN Companies.

Pursuant to Section 63.04(b) of the Commission's rules, Applicants submit this filing as a combined domestic section 214 transfer of assets application and International section 214 transfer of assets application ("Combined Application"). Applicants are simultaneously filing the Combined Application with the International Bureau, in accordance with the Commission's rules.

Also enclosed is check in the amount of \$860.00, payable to the Federal Communications Commission, which satisfies the filing fee required for this application under line 2.b of Section 1.1105 of the Commission's rules.

Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please do not hesitate to contact us if you have any questions regarding this filing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brett P. Ferenchak". The signature is fluid and cursive, with the first name "Brett" and last name "Ferenchak" clearly distinguishable.

Richard M. Rindler
Michael C. Sloan
Brett P. Ferenchak

Counsel to Applicants

Enclosure

cc: Matthew Feil (FDN)
David Woodsmall (Mpower)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Application of)
)
)

FLORIDA DIGITAL NETWORK, INC.,)

SOUTHERN DIGITAL NETWORK, INC.)
D/B/A FDN.)
)

and)
)

MPOWER COMMUNICATIONS CORP.)
)

For Authorization Pursuant to Section 214 of the)
Communications Act of 1934, as Amended, to)
Transfer Control of Certain Telecommunications)
Assets of Mpower Communications Corp. to)
Florida Digital Network, Inc. and Southern Digital)
Network, Inc. d/b/a FDN)

WB Docket No. ~~02-~~ 03-34

File No. ITC-TIC-2003- ____

APPLICATION

Florida Digital Network, Inc. ("Florida Digital"), Southern Digital Network, Inc. d/b/a FDN ("Southern Digital") (collectively, the "FDN Companies") and Mpower Communications Corp. ("Mpower") (together "Applicants"), through their undersigned counsel, hereby request authorization pursuant to Section 214 of the Communications Act of 1934, as amended,¹ and sections 63.04 and 63.24 of the Commission's rules,² to enable Mpower to transfer certain Florida and Georgia telecommunications assets, including equipment and access lines to the FDN

¹ 47 U.S.C. § 214 (the "Act").

² 47 C.F.R. §§ 63.04 & 63.24. This combined domestic and international 214 application is being tiled pursuant to the FCC's new rules under section 63.04 and 63.24. *See* In the **Matter** of Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations, Report and Order, CC Docket No. 01-150 (rel. Mar. 21, 2002).

Companies. This proposed transaction will not result in a loss or impairment of service, and thus, this application is being filed pursuant to sections 63.24 and 63.04 of the Commission's rules.³

II. DESCRIPTION OF APPLICANTS

A. Florida Digital Network, Inc.

Florida Digital is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 390 North Orange Avenue, Suite 2000, Orlando, Florida 32801. Florida Digital has grown to become a major provider of voice and data services for Florida's businesses. Since its inception, Florida Digital has followed a clear set of guiding principals: (1) to use proven technologies in innovative ways; (2) to provide the same level of service to all size businesses; (3) to maintain a customer service focus through responsible growth; (4) to serve Florida first before looking beyond the state; and (5) to be financially responsible. The results of these guiding principles are clearly seen today. Well funded, well managed, and growing at a steady pace, Florida Digital provides local phone service, long distance phone service, and high-speed Internet to more than 30,000 businesses in more than 100 cities and towns throughout the state of Florida. By using proven technologies in more efficient ways, Florida Digital is able to provide excellent service to businesses small and large at substantial savings over the traditional phone companies. With a focus on customer service, and responsible spending, Florida Digital has attracted strong financial partners, assuring Florida Digital will continue to make the promises of local phone competition a reality for years to come.

³ 47 C.F.R. §§ 63.04 & 63.18(e)(3). See In the Matter of Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations. Report and Order, CC Docket No. 01-150 (rel. Mar. 21, 2002).

B. Southern Digital Network, Inc.

Southern Digital is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 390 North Orange Avenue, Suite 2000, Orlando, Florida 32801. Southern Digital is a wholly owned subsidiary of Florida Digital and was established to expand the FDN Companies' service area into Georgia.

C. Mpower Communications Corporation

Mpower is a corporation organized and existing under the laws of the State of Nevada with principal offices located at 175 Sully's Trail, Suite 300, Pittsford, NY 14534. Mpower is a wholly owned subsidiary of Mpower Holdings Corp., a publicly traded Delaware corporation. Mpower is a facilities-based communications provider offering an integrated bundle of broadband data and voice communication services to small- and medium-size business customers. Through Mpower's broadband DSL and TI service delivery platforms, Mpower delivers a full range of telephony, high-speed data, Internet access and Web hosting solutions. Mpower's national network spans 27 markets in California, Florida, Georgia, Illinois, Michigan, Nevada, Ohio, and Texas and comprises nearly 600 central office collocations, 15 switches, and serves approximately 415,000 lines.

III. DESCRIPTION OF THE TRANSACTION

Through the proposed transaction, the FDN Companies propose to acquire and operate Mpower's existing Florida and Georgia telecommunications service operations. Specifically, Florida Digital and Mpower Holdings Corp ("Mpower Holdings"), the parent company of Mpower, have entered into an Asset Purchase Agreement whereby Mpower Holdings will assign to the FDN Companies, through an asset sale, Mpower's Florida and Georgia network assets, including switches, collocation equipment, and access lines, as well as approximately 11,000 customers

located in Fort Lauderdale, Tampa, West Palm Beach, and Miami, Florida and 9,087 customers located in the Atlanta, Georgia area. The proposed transaction also contemplates the assignment to the FDN Companies certain customer accounts receivable and regulatory authorizations and licenses.

Applicants emphasize that the proposed transaction will be virtually transparent to existing customers with respect to the services that they receive. Following the transition of the Florida and Georgia business from Mpower to the FDN Companies, the FDN Companies will initially provide service to the customers under the same rates, terms and conditions as those customers currently receive service from Mpower. In accordance with applicable requirements, Applicants will notify all customers of the proposed transaction. Service to these customers will not be transferred until the requisite approval and notice periods have elapsed. The FDN Companies will file the notice and certification required by section 64.1120(e) of the Commission's rules upon completion of the notice process. Applicants seek to complete the proposed transaction on an expedited basis so that the FDN Companies can integrate the acquired operations into its existing business and thereby expand and improve the ability to offer valuable high quality service to this market segment.

IV. APPLICANTS' REQUEST FOR STREAMLINED TREATMENT UNDER SECTIONS 63.03 AND 63.12 OF THE COMMISSION'S RULES

For the reasons set forth below, Applicants respectfully submit that the requests for Section 214 authorization set forth herein qualify for treatment under the Commission's streamlined procedures set forth in Sections 63.03 and 63.12 of the Commission's rules.

A. Request for Section 214 authorization pursuant to Section 63.24 to transfer certain telecommunications assets of Mpower to the FDN Companies

Applicants request authority to transfer certain Florida and Georgia telecommunications assets of Mpower to the FDN Companies. Applicants submit that the FDN Companies have no

affiliation with, and itself is not, a foreign carrier in any country where it intends to provide service. The FDN Companies therefore qualify for a presumption of non-dominance under Section 63.10(a)(1) of the Commission's rules.⁴ Accordingly, this Application qualifies for streamlined processing pursuant to Section 63.12 of the Commission's rules.

B. Request for Section 214 authorization pursuant to Section 63.04 to transfer certain telecommunications assets of Mpower to the FDN Companies

Applicants submit that the proposed transaction would result in the FDN Companies having a market share in the interstate, interexchange **market** of less than 10 percent, and the FDN Companies would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction. Further, neither of the Applicants is dominant with respect to any service. Accordingly, this Application qualifies for streamlined processing pursuant to Section 63.03 of the Commission's rules.

V. INFORMATION REQUIRED BY SECTIONS 63.24

Applicants submit the following information in support of their requests for Section 214 authorization pursuant to Section 63.24 of the Commission's rules.

(a) Name, Address and Telephone Number of Each Applicant

Transferor: Mpower Communications Corp. ("Mpower")
175 Sully's Trail, Suite 300
Pittsford, New York 14534
(585) 218-6550 (Tel)
(585) 218-0881 (Fax)
FRN: 0003733102

⁴ 47C.F.R. § 63.10(a)(1).

Transferees: Florida Digital Network, Inc.
390 North Orange Avenue
Suite 2000
Orlando, Florida 32801
(407) 835-0300 (Tel)
(407) 835-1437 (Fax)
FRN: 0003724945

Southern Digital Network, Inc.
390 North Orange Avenue
Suite 2000
Orlando, Florida 32801
(407) 835-0300 (Tel)
(407) 835-1437 (Fax)
FRN: 0008303414

(b) State of Organization

Transferor: Mpower is organized under the laws ~~of~~ the State ~~of~~ Nevada

Transferees: Florida Digital and Southern Digital are organized under the laws ~~of~~ the State of Delaware.

(c) Contact persons for this Application

Questions or inquiries concerning this Application may be directed to:

For the FDN Companies

Richard M. Rindler
Michael C. Sloan
Brett P. Ferencak
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
(202) 424-7697 (Tel)
(202) 424-7645 (Fax)
RMRindler@swidlaw.com (Email)
MCSloan@swidlaw.com (Email)
BPFerencialc@swidlaw.com (Email)

with a copy to:

Matthew Feil
390 North Orange Avenue
Suite 2000
Orlando, Florida 32801
(407) 835-0300 (Tel)
(407) 835-1437 (Fax)
mfeil@floridadigital.net (Email)

For Mpower:

Brett A. Snyder, Esq.
LeBoeuf, Lamb, Greene & MacRae, L.L.P
1875 Connecticut Avenue, NW
Washington, DC 20009-5427
(202) 986-8000 (Tel)
(202) 986-8102 (Fax)
bsnyder@llgm.com (Email)

with a copy to:

David Woodsmall
Vice President – Legal & Regulatory
Mpower Communications Corporation
175 Sully's Trail, Suite 300
Pittsford, New York 14534
(585) 218-6550 (Tel)
(585) 218-0635 (Fax)
dwoodsinaII@mpower.com (Email)

(d) Section 214 Authorizations

Transferor: Mpower is authorized to provide domestic interstate common carrier services pursuant to blanket authority under Section 63.01 of the Commission's rules. Mpower also holds international Section 214 authority to provide global facilities-based and global resale service.⁵

Transferees: Florida Digital is authorized to provide domestic interstate common carrier services pursuant to blanket authority under Section 63.01 of the Commission's rules, Florida Digital also holds an international

⁵ FCC File No. ITC-T/C-20020412-00206 (June 6, 2002); *see also* FCC File No. ITC-214-1997073 1-00440 (Old File No. ITC-97-455) (Sept. 26, 1997).

Section 214 authority to provide global facilities-based and global resale services.⁶

Southern Digital is authorized to provide domestic interstate common carrier services pursuant to blanket authority under Section 63.01 of the Commission's rules. Southern Digital does not hold international Section 214 authority, but intends to operate under the Section 214 authority of its parent, Florida Digital.

- (e)(3) Applicants request authority for the FDN Companies to acquire certain telecommunications assets of Mpower related to its Florida and Georgia operations.
- (h) The following entity directly or indirectly owns ten percent (10%) or more of the equity of Southern Digital:

Name:	Florida Digital Network, Inc
Address:	390 North Orange Avenue Suite 2000 Orlando, Florida 32801
Citizenship:	U.S.
Percentage Owned:	100%
Principal Business:	Telecommunications

The following entities own or control ten percent (10%) or more of the equity of Florida Digital:

Name:	M/C Venture Partners V, L.P. ("MCVP V")
Address:	75 State Street, Suite 2500 Boston, MA 02109-1829
Citizenship:	U.S.
Percentage Owned:	approximately 69%
Principal Business:	Private Equity Venture Fund

Name:	Media/Communications Partners III Limited Partnership ("Media/Communications III")
Address:	75 State Street, Suite 2500 Boston, MA 02109-1829
Citizenship:	U.S.
Percentage Owned:	approximately 10%
Principal Business:	Private Equity Venture Fund

⁶ FCC File No. ITC-214-19980605-00387 (Old File No. ITC-98-443) (July 30, 1998).

MCVP V, and Media/Communications III are controlled by the general partners of these limited partnerships as follows:

The general partner of MCVP V is:

Name:	M/C VP V, L.L.C.
Address:	75 State Street, Suite 2500 Boston, MA 02109-1829
Citizenship:	U.S.
Interest Held:	General Partner
Principal Business:	Investment

The general partner of Media/Communications III is:

Name:	M/C III, L.L.C.
Address:	75 State Street, Suite 2500 Boston, MA 02109-1829
Citizenship:	U.S.
Interest Held:	General Partner
Principal Business:	Investment

The following entities directly or indirectly own or control ten percent (10%) or more of the equity of MCVP V:

Name:	California Public Employees Retirement System ⁷
Citizenship:	U.S.
Percentage Owned:	11.8%
Principal Business:	Pension Fund

Name:	California State Teachers Retirement System ⁸
Citizenship:	U.S.
Percentage Owned:	13.6%
Principal Business:	Pension Fund

The following entities directly or indirectly own or control ten percent (10%) or more of the equity of Media/Communications III:

Name:	California Public Employees Retirement System
Citizenship:	U.S.
Percentage Owned:	18.9%
Principal Business:	Pension Fund

⁷ Interest holder is a retirement and health benefit pension fund with over 1.3 million members with assets of over \$150 billion.

⁸ Interest holder is the largest public teacher pension organization and has over 600,000 members with assets of over \$88 billion.

Name: California State Teachers Retirement System
Citizenship: U.S.
Percentage Owned: 11.32%
Principal Business: Pension Fund

The following individuals control the general partner of MCVP V:

Names: James F. Wade
David D. Croll
Peter H.O. Claudy
Matthew J. Rubins
Citizenship: U.S.
Interest Held: Managers
Principal Business: Individuals

The following individuals control the general partner of Media/Communications III:

Names: James F. Wade
David D. Croll
Peter H.O. Claudy
Stephen F. Gormley
John G. Hayes
Christopher S. Gaffney
Citizenship: U.S.
Interest Held: Managers
Principal Business: Individuals

No other entity holds a 10% or greater direct or indirect interest in the FDN Companies.

The FDN Companies do not have any interlocking directorates with a foreign carrier.

- (i) The FDN Companies certify that they are not a foreign carriers, as defined in Section 63.09(d) of the Commission's rules. In addition, the FDN Companies certify that they are not affiliated with a foreign carrier within the meaning of Section 63.09(e) of the Commission's rules.
- (j) The FDN Companies certify that they do not seek to provide international telecommunications services to any destination country to which paragraphs (j)(1)-4 of Section 63.18 of the Commission's Rules apply.
- (k) Not applicable.
- (l) Not applicable.
- (in) Not applicable

- (n) The FDN Companies certify that they have not agreed to accept special concessions, as defined in Section 63.14(b) of the Commission's Rules, directly or indirectly, from any foreign carrier where the foreign carrier, as defined in Section 63.09(d) of the Commission's Rules, with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market, and will not enter into such agreements in the future
- (o) The FDN Companies certify, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules (implementing the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a), that no party to this Joint Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) Applicants submit that the FDN Companies have no affiliation with, and themselves are not, foreign carriers in any country where they intend to provide service. The FDN Companies therefore qualify for a presumption of non-dominance under Section 63.10(a)(1) of the Commission's rules. Accordingly, this Application qualifies for streamlined processing pursuant to Section 63.12 of the Commission's rules.

VI. INFORMATION REQUIRED BY SECTION 63.04

With respect to Applicants' request for domestic Section 214 authority pursuant to Section 63.04 of the Commission's rules to transfer certain telecommunications assets of Mpower to the FDN Companies, attached hereto as **Attachment 1** is the information required under paragraphs (a)(6) through (a)(12) of Section 63.04 of the Commission's rules.

VII. CONCLUSLON

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application

Respectfully submitted,

By: 

Richard M. Rindler
Michael C. Sloan
Brett P. Ferenczak
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Washington, D.C. 20007-5116
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RMRindler@swidlaw.com (E-Mail)
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BPFFerenczak@swidlaw.com (E-Mail)

COUNSEL FOR APPLICANTS

Dated: January 24, 2003

ATTACHMENT 1
INFORMATION REQUIRED BY SECTION 63.04

INFORMATION REQUIRED BY SECTION 63.04

Pursuant to Section 63.04(b) of the Commission's rules to transfer certain telecommunications services of Mpower to the FDN Companies, the information required under paragraphs (a)(6) through (a)(12) of Section 63.04 of the Commission's rules is provided below:

(a)(6) Description of the Transaction

The proposed transaction is described in Section III of the application to which this Attachment 1 is attached.

(a)(7) Geographic Areas Affected

Mpower currently provides local, long distance, switched access, other access, DSL, and Internet access services in 27 markets in California, Florida, Georgia, Illinois, Michigan, Nevada, Ohio, and Texas. Florida Digital currently provides local exchange and interexchange telecommunications services in Florida. Southern Digital has pending applications to provide local exchange and interexchange telecommunications services in Georgia. The services that are the subject of this application are provided to customers located in Florida and Georgia.

(a)(8) Application is Qualified for Streamlined Processing

Applicants submit that the proposed transaction would result in the FDN Companies having a market share in the interstate, interexchange market of substantially less than 10 percent, and the FDN Companies would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction. Further, none of the Applicants is

dominant with respect to any service. Accordingly, this Application qualifies for streamlined processing pursuant to Section 63.03 of the Commission's rules.

(a)(9) Other FCC Applications

While Applicants have not filed any other applications with the FCC related to this transaction, the FDN Companies will file the notice and certification required by Section 64.1120 of the Commission's rules regarding the transfer of presubscribed customers upon completion of the notification process.

(a)(10) Special Consideration

Applicants are not requesting special consideration because neither party to the transaction is facing imminent business failure. Applicants do seek streamlined processing so that they can complete the proposed transaction as soon as possible.

(a)(11) Waiver Requests

Applicants have not filed any waiver requests in conjunction with the proposed transaction.

(a)(12) Public Interest Considerations

Applicants submit that the proposed transaction serves the public interest. The proposed transaction is expected to invigorate competition in the affected states. Through the transaction, the FDN Companies will obtain assets and customers which will expand their client base, provide the FDN Companies a greater presence in the telecommunications market in Florida and Georgia and thereby make the FDN Companies more viable competitors in those markets.

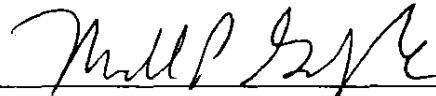
The transaction will not adversely impact existing Mpower customers. The proposed transaction is structured to assure an orderly transition of the Florida and Georgia customers and telecommunications assets from Mpower to the FDN Companies. Moreover, given that the FDN Companies propose to initially provide service on the same rates, terms and conditions of the

services that Mpower currently provides and that the transaction will not involve a change in the equipment through which that service is provided, Applicants expect the transaction to be virtually transparent to customers. The Mpower customers are being notified of the transaction and the change in their telecommunications provider from Mpower to the FDN Companies.

Further, the proposed transaction will allow Mpower to enhance its competitive position by providing Mpower with greater flexibility in obtaining financing which will yield benefits that allow Mpower to continue its operations in regions outside Florida and Georgia.

CERTIFICATION

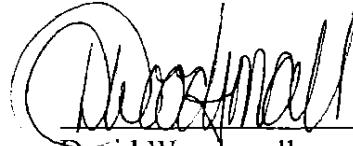
I, Michael P. Gallagher, President and Chief Executive Officer of Florida Digital Network, Inc. and Southern Digital Network, Inc. d/b/a FDN, (the "FDN Companies"), hereby certify that the information in this attached application as it pertains to the FDN Companies is true and accurate to the best of my knowledge and that no party to this application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a), as amended.



Michael P. Gallagher
Date: January 23, 2003

CERTIFICATION

I, David Woodsmall, Vice President – Legal & Regulatory of Mpower Communications Corporation, hereby certify that the information in this attached application as it pertains to Mpower Communications Corporation is true and accurate to the best of my knowledge and that Mpower Communications Corporation is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a), as amended.

A handwritten signature in black ink, appearing to read "Woodsmall", is written over a horizontal line.

David Woodsmall
Vice President – Legal & Regulatory

Date: January 22nd, 2003